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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,089	06/25/2003	Albert H. Seidler	B-6104	1088
23636	7590	04/13/2004	EXAMINER	
DANIEL V. THOMPSON 9330 LBJ FWY. SUITE 1185 DALLAS, TX 75243			HAYES, BRET C	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/604,089

Applicant(s)

SEIDLER, ALBERT H.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,7,9-11,17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9-11,17 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: reference character 18 is described as a reel holder and a reel body. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 1 – 3, 5 – 7, 9 – 11, 17 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 1 recites the limitation “the vibratory module being vibratory coupled to only the handle cavity”, which is unclear, as to how a module can be coupled to a hole.
5. Claim 2 recites the limitation “frictionally engaged with the handle cavity”, which is unclear as set forth above, as to how a module can be frictionally engaged with a hole.
6. Further, re – claims 1 and 2, examiner suggests reciting --an inner surface of the cavity--, for clarity.
7. The rejection of claim 20 from the previous office action stands. Examiner is confused due to the use of the term “body” when, examiner submits, --holder-- would be a clearer, more distinctive term in the specification AND in the claim, since Applicant does not disclose at least one groove in the body of the fishing reel, but rather in the body of the reel holder as shown in the Figures. Examiner apologizes for not catching the apparent typographical error earlier in the prosecution.

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8. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 – 3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith.
11. Smith discloses the invention as claimed. Smith discloses (claim 1) a vibrating fishing rod comprising a vibratory module **27** mounted within a handle cavity **40** of the rod **10** such that vibrations are only indirectly applied to a lure on the end of a fishing line connected to the rod with no *direct connection of the module to the line; (claim 2) the module **27** being frictionally engaged within the handle – fastened within the handle, it cannot be argued that the module is not frictionally engaged to some degree – with no *direct connection to the line; (claim 3) the rod **10** including a tapered hollow rod body, Fig. 1, for example, having a large end, with internal wall defining the cavity **40** and the cavity **40** being elongate and tapered to become smaller in a direction away from the large end; (claim 5) a removable, open ended, cylindrical cap **18** or **18a** overlying an extreme end of the handle **12** and the module **27** being elongate and removable; and (claim 6) a switch **54** mounted in a fore grip, near **52** of Fig. 1, and with circuit conduits **52** interconnecting the switch **54** and module **27**.
12. *The phrase “no direct connection” is too broad as Smith discloses the connection through elements **21 – 23, 25** and **26** before indirectly applying vibrations to the line **24**. Thus, there is no direct connection in Smith as well.

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Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 9 – 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of US Patent No. 4,700,501 to Bryan in view of US Patent No. 4,051,616 to Mathauser.

15. Re – claims 9 – 11, Part 1: Smith discloses the claimed invention except for an electric motor and an eccentric weight on a shaft on the motor.

Bryan teaches an electric motor **30** and an eccentric weight **51** on a shaft **50** of the motor in the same field of endeavor for the purpose of imparting vibration to the fishing rod, as set forth at col. 2, line 45.

It would have been obvious to modify Smith to include the electric motor and the eccentric weight on the shaft on the motor as taught by Bryan in order to impart vibration.

16. Re – claims 9 – 11, Part 2: Smith in view of Bryan discloses the claimed invention except for a circuit board and first and second battery fingers extending from a top surface of the circuit board.

Mathauser teaches a circuit board **122** and first and second battery fingers **127** extending from a surface of the circuit board **122** in the same field of endeavor for the purpose of controlling and passing electricity from a battery **96** to an electronic device **102**.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Smith in view of Bryan to include the circuit board and

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first and second battery fingers as taught by Mathauser in order to operate an electrical device located within a handle of a fishing rod.

17. Re – claims 9 – 11, Part 3: Smith in view of Bryan and Smith in view of Bryan in view of Mathauser disclose the claimed invention except for 1) an elongated circuit board and 2) the motor mounted to a top surface of the circuit board.

1) It would have been obvious to one having ordinary skill in the art at the time the invention was made to elongate the circuit board, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

2) It would have been obvious to one having ordinary skill in the art at the time the invention was made to mount the motor on a top surface, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

Allowable Subject Matter

18. Claim 19 is allowed.

19. The following is an examiner's statement of reasons for allowance: the prior art of record neither discloses nor fairly teaches the combination including: a fishing rod having a rod body, handle and reel holder, an elongated printed circuit board, first and second battery fingers extending from a top surface of the circuit board, an electric motor mounted to the top surface and an eccentric weight on a shaft of the electric motor.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

20. Claims 7 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

21. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither discloses nor fairly teaches the combination including a switch mounted in a fore grip located adjacent an inner end of a reel holder.

22. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action, for the same reasons as indicated above for claim 19.

Response to Arguments

23. Applicant's arguments with respect to claims 1 – 3, 5 – 7, 9 – 11, 17 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

4/9/04

Charles T. Jordan
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